

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Commonwealth Edison Company	:	Docket No. 08-0532
	:	
Investigation of Rate Design Pursuant	:	
to Section 9-250 of the Public Utilities Act	:	

**REPLY BRIEF ON EXCEPTIONS
COMMONWEALTH EDISON COMPANY**

February 22, 2010

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Commonwealth Edison Company (“ComEd”) respectfully submits its Reply Brief on Exceptions pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”), 83 Ill. Adm. Code 200.830, and in accordance with the schedule established by the Administrative Law Judges (the “ALJs”).

I. INTRODUCTION

The Commission has an extensive evidentiary record that can and should serve as the basis for resolving all issues raised herein regarding ComEd’s revised embedded cost of service study (“ECOSS”). The Commission also can use this information to evaluate ComEd’s existing distribution rates, which are based on 2006 test-year distribution costs, consistent with the expressed intent of the Commission’s Initiating Order. Docket No. 08-0532, Init. Order at 3 (Sept. 10, 2008). ComEd is far from alone in taking this position—the Commission Staff (“Staff”), the Illinois Attorney General (“AG”), the Commercial Group and Kroger each have agreed that the record contains sufficient evidence to enter a final order in this proceeding now, approving ComEd’s ECOSS, its primary/secondary analysis and its “Customer Care” cost analysis. Staff Init. Br. at 4¹; AG Init. Br. at 2-3; Commercial Group Init. Br. at 7; Kroger Init. Br. at 1-2.² Entering a final order at this time also would be consistent with the Commission’s expressed goal of completing this docket in a timely fashion. Init. Order at 4 (the ALJs “are directed to create, and to require all parties to adhere to, a schedule that *will put the Commission*

¹ While Staff did propose workshops, it proposed that those workshops take place *after* a final decision in this proceeding. Staff Init. Br. at 4 (“[T]he Commission should approve Staff’s proposal to convene workshops within three months *of the final decision in this case....*”) (emphasis added).

² The Building Owners and Managers Association (“BOMA”) also submitted testimony that supports ComEd’s revised ECOSS. Sharfman Dir., BOMA Ex. 1.0, 3:38-4:55. BOMA has not filed briefs.

in a position to have an order before it for consideration at the earliest possible time....”)
(emphasis added).³

This case was started in September 2008 when the Commission undertook an investigation of ComEd’s rates. This is not a rate case and ComEd does not seek an increase in its rates. Rather, this case addresses the delivery service rates that its customers pay, and hence is a matter of great concern to most customers. The Commission should substantially revise the Proposed Interim Order (“PIO”), as explained herein and detailed in ComEd’s earlier Brief on Exceptions, because it:

- does not meet the Commission’s commitment to reexamine in a timely manner the cost basis for ComEd’s rates put into effect in September 2008;
- does not address or remedy subsidies that result from ComEd’s largest customers paying rates that are less than the costs ComEd incurs in serving them;
- does not resolve disputes regarding 2006 costs that are ready for resolution, that have been before the Commission since ComEd filed its last rate case in October 2007 and that have been actively relitigated in this docket for more than 18 months;
- does not follow prior decisions of the Commission that are directly on point without even attempting to distinguish the earlier decisions; and
- calls for an impractical and resource-intensive workshop process to address issues that are not conducive to workshop resolution.

The PIO recommends extending this already protracted proceeding for an indefinite period of time, requiring further analyses, workshops, a comment process, and the issuance of another proposed order followed by additional briefs on exceptions. PIO at 83. Meanwhile, many of the parties’ briefs on exceptions (“BOEs”) propose additional procedural requirements that go well beyond what is contemplated in the PIO—requests for more discovery, the filing of more testimony, hearings, and more rounds of briefing—all of which would further delay the

³ The Commission reiterated its desire that this proceeding move expeditiously at its August 25, 2009 Regular Open Meeting. Tr. at 18:5-20:20.

conclusion of this proceeding. *See, e.g.*, REACT BOE at 7-9; CTA/Metra BOE at 6-8; Staff BOE at 3-4; AG Init. Br. at 1-3. Such positions clearly conflict with the Commission's intent to resolve this proceeding in a timely fashion. Moreover, these parties' positions make clear that the PIO's contemplated workshop process will not work to resolve the issues that are in contention.

Workshops, as originally suggested in Staff's rebuttal testimony, are this Commission's analogue to settlement negotiations. Yet none of the parties' BOEs seeking extended workshop processes here gives even a hint of willingness to recede from their entrenched litigation positions and accept compromise. When it comes to rates and rate design, this is hardly surprising. Customers' bills for electricity, and even corporate and governmental budgets, are at stake. One class's gain comes at the expense of the others. It is only in special circumstances not present here that a collaborative process is likely to be an efficient way to reconcile conflicting interests, and narrow differences, much less lead to a settlement.

For all these reasons, ComEd submits that, with or without collaborative efforts, it would be unreasonable to litigate, for a third time, the allocation of 2006 test-year distribution costs among ComEd's 15 delivery classes. The evidentiary record allows for the Commission to resolve these issues now and there is no reason it should not do so. Further, the Commission's own test-year rules will preclude ComEd from using 2006 as a test-year the next time it files a rate case addressing distribution rates. 83 Ill. Adm. Code 287.20. Consequently, there is no reasonable basis to prolong this proceeding.

The BOEs also demonstrate that various parties have elected to disregard other Commission directives. In its Initiating Order the Commission stated:

Based on this analysis we will determine what changes, if any, are necessary, to ensure that the rate structure of ComEd, *with appropriate consideration of historic rate structures of the Company*, are in fact just and reasonable.

Init. Order at 3 (emphasis added). Despite this language, parties such as the Illinois Industrial Energy Consumers (“IIEC”), the Chicago Transit Authority (“CTA”) and the Northeast Illinois Regional Commuter Railroad Corporation (commonly known as “Metra”) (collectively “CTA/Metra”) continue to argue that ComEd should abandon its historic, Commission-approved definitions of its primary and secondary distribution systems when performing its primary/secondary analysis. ComEd has used these definitions for years, in part to develop its rates. Staff, AG, the Commercial Group, BOMA and Kroger all disagree with IIEC and CTA/Metra, and each urge the Commission to adopt ComEd’s definitions for its primary/secondary analysis. The Commission’s language quoted above makes clear that it never intended that this proceeding result in a restructuring of ComEd’s existing delivery service rate classes as would be required to implement redefinition of its primary and secondary distribution systems. Accordingly, arguments seeking that result should be rejected.

The Commission also has articulated its respect for decisions made in prior Orders, which promotes the important regulatory goals of stability and predictability. *See, e.g., Peoples Gas Light & Coke Co. and North Shore Gas Co.*, Docket Nos. 07-0241 and 07-0242 (consol.), Order at 16 (Feb. 5, 2008) (“All parties should agree that Commission action brings certainty to a situation and settles expectations. This is another way of saying that unless there are clear and distinguishable reasons for deciding a case differently, the Commission will follow in line with precedent.”). In this regard, ComEd allocated its customer services costs in accordance with prior Commission direction. Alongi Dir., ComEd Ex 1.0, 27:569-28:591. Both Staff and the AG agree that ComEd has properly allocated its customer services costs between its distribution and supply functions. *See* Staff Init. Br. at 26-30; AG Init. Br. at 6-7. Nevertheless, in its BOE, the Coalition to Request Equitable Allocations of Costs Together (“REACT”) continues to pursue a position on the “Customer Care” cost allocation issue that conflicts with prior Commission

decisions even though there has been no change in circumstances. REACT BOE at 9-15. While the PIO properly rejected REACT's allocation proposal as "arbitrary" and "almost useless" (PIO at 67, 68), it does not fully resolve the issue. Consistent with the manner in which the Commission has previously resolved this issue, the Commission should accept ComEd's "Customer Care" cost allocation analysis.

The recommendation of the PIO to defer the resolution of issues is unnecessary. Many parties agree that the Commission can resolve all issues and enter a final order based upon the existing evidentiary record. Accordingly, ComEd respectfully requests that the Commission enter a final order that resolves all issues now consistent with the recommendations set forth in ComEd's BOE and as reflected in Attachment 1 thereto.

II. ARGUMENT

A. The Parties' Attempts to Expand the PIO's Proposed Procedural Process are Unnecessary and Unreasonable

ComEd's BOE explained fully why the PIO's proposed procedural process is unnecessary: the Commission has ample evidence supporting the immediate approval of ComEd's revised ECOSS, its primary/secondary analysis and its "Customer Care" cost allocation analysis. While the PIO's proposed process is flawed, the BOEs of various parties exacerbate these flaws by requesting a variety of additional procedural hurdles that are entirely unnecessary, and that will serve to further delay the completion of this proceeding. The Commission should reject the PIO's procedural process, as well as the proposals of other parties to expand that process even further.

Before turning to the merits of such requests by certain parties, it is imperative to again place this proceeding in context. The Commission directed ComEd to examine five issues and revise its ECOSS to incorporate the results of those examinations. Init. Order at 2. The

Commission also made clear that it would use the updated ECOSS to perform a comparative analysis of the rates established in its Order in Docket No. 07-0566 (“ComEd’s 2007 Rate Case”). *Id.* at 3. Further, the Commission stated that its analysis of rates would be conducted “*with appropriate consideration of historic rate structures of the Company.*” *Id.* at 4 (emphasis added). Finally, the Commission twice has directed that this proceeding be completed on a timely basis. Init. Order at 4; Aug. 25, 2009 Reg. Open Mtg. Tr. at 18:5-20:20.

ComEd properly responded to these directives, and Staff, the AG, Commercial Group, Kroger and BOMA agreed, concluding that the Commission can enter a final order resolving these issues. Staff Init. Br. at 4; AG Init. Br. at 2-3; Commercial Group Init. Br. at 7; Kroger Init. Br. at 1-2; Sharfman Dir., BOMA Ex. 1.0, 3:38-4:55. The ECOSS at issue in this proceeding, along with ComEd’s primary/secondary cost analysis and “Customer Care” cost analysis, address the same 2006 test-year distribution-related costs that were the subject of ComEd’s 2007 Rate Case. Meanwhile, the Commission’s test-year rules preclude ComEd from using 2006 as its test-year in a future rate case due to timing issues. 83 Ill. Adm. Code 287.20. Put another way, ComEd’s next rate case will not, and cannot, involve reallocating 2006 distribution-related costs.

Turning back to the PIO’s proposed procedural process, various parties seek to expand the process by seeking more discovery, testimony, hearings and briefing. *See, e.g.*, REACT BOE at 7-9; CTA/Metra BOE at 6-8; Staff BOE at 3-4; AG Init. Br. at 1-3. Not only are these requests unreasonable, they make no sense. First, these requests disregard the Commission’s expressed intent to move this proceeding along on a timely basis. Instead, these proposals only would serve to further delay this proceeding beyond the indefinite delay already contemplated in

the PIO.⁴ Second, these requests make clear that the PIO's proposed process will neither eliminate nor reduce litigation on these issues. To the contrary, the parties recognize that future litigation on cost allocation and rate design issues is inevitable, as the parties' BOEs illustrate fundamental disagreements on a number of issues. *See, e.g.*, Staff BOE at 3-4; Commercial Group BOE at 5-6. Finally, the proposals to impose additional procedural hurdles fail to recognize that this proceeding is about 2006 distribution-related costs. Future ComEd rate cases will not allocate 2006 costs, nor set new rates based on such costs. 83 Ill. Adm. Code 287.20.

The BOEs make clear that entering an interim order in this proceeding will be of little or no value. The PIO's proposed process will indefinitely delay the final resolution of this proceeding and will not reduce future litigation. Instead, the Commission should enter a final order now, based upon an evidentiary record that many parties find substantial and compelling. Such an action also would be consistent with the Commission's expressed intent to consider this proceeding in a timely fashion. Accordingly, ComEd urges the Commission to resolve this proceeding in a manner consistent with its recommendations found in its BOE.

B. Primary/Secondary Cost Analysis

The discussions of ComEd's primary/secondary cost analysis, as contained in the BOEs of IIEC, CTA/Metra and REACT, continue to rest on a flawed premise. These parties all would disregard ComEd's historic, Commission-approved definitions of its primary and secondary distribution systems. *See, e.g.*, CTA/Metra BOE at 4-6. Only when they discard these definitions can these parties proceed with the remainder of their arguments against ComEd's primary/secondary analysis. As ComEd demonstrated in this proceeding, discarding these

⁴ If the PIO's proposed process is adopted, the AG also proposes to discard the Commission's historic use of the workshop process, which has focused on keeping discussions and the exchange of documents confidential. AG Init. Br. at 1-3. If accepted, the AG's proposal would render the workshop process meaningless, as any information exchanged would be subject to litigation should the parties fail to arrive at consensus. Accordingly, the Commission should reject the AG's proposal on this point.

definitions is unreasonable. Indeed, Staff witness Lazare testified that ComEd's use of Commission-approved definitions for its primary and secondary distribution systems is "*the most important evidence regarding the Company's judgment on this issue.*" Lazare Dir., Staff Ex. 1.0, 8:181-88 (emphasis added). Staff found this to be a "key consideration" when it determined that ComEd's definitions of its primary and secondary distribution systems should be used for the primary/secondary analysis. Staff Init. Br. at 7-8. The AG, Commercial Group, BOMA and Kroger also had no objection to ComEd's use of these definitions.

Not only are the positions of IIEC, CTA/Metra and REACT unreasonable, they conflict with the Commission's expressed intent concerning the treatment of ComEd's rate structure in this proceeding. The Commission made clear that analyzing rate issues in this matter only should proceed "*with appropriate consideration of historic rate structures of the Company.*" Init. Order at 4 (emphasis added). IIEC, CTA/Metra and REACT offer no reasonable basis to discard ComEd's historic, Commission-approved definitions for its primary and secondary systems when conducting its primary/secondary cost analysis. The Commission, therefore, should approve ComEd's use of these definitions when conducting this analysis.

Moreover, there is no need to subject ComEd's primary/secondary cost analysis to further scrutiny in this proceeding. The record demonstrates that ComEd's analysis is based upon its historic, Commission-approved definitions of its primary and secondary distribution systems, it uses actual data when available, and it employs the engineering judgment of its personnel, who are familiar with ComEd's distribution facilities. *See, e.g.,* ComEd Init. Br. at 5-7 (summarizing evidence). Based upon ComEd's arguments, and the positions taken by Staff, the AG, Commercial Group, BOMA and Kroger, the Commission should amend the PIO and enter a final order finding that ComEd's analysis is reasonable.

In any event, the Commission should reject IIEC's suggestion calling for relabeling some transformers (but not all) as "line transformers" and allocating the costs of single-phase primary circuits to customers served at secondary voltages. IIEC BOE at 7-12. With respect to transformers, ComEd provides transformers to the vast majority of its customers (Alongi Sur., ComEd Ex. 10.0C, 32:658-659) and accordingly there is no reason to delineate some transformers differently than others. Staff agreed. Lazare Reb., Staff Ex. 2.0, 4:83-5:96. Likewise, IIEC's suggested reallocation of the costs of single-phase primary circuits to customers served at secondary voltages would require the identification of the potentially million or more customers taking service from those single-phase primary circuits for the purpose of allocating the costs of those circuits to those customers, as well as for the converse purpose of not allocating the cost of the three-phase primary circuits that do not serve such customers. Such an analysis would require a daunting review of ComEd's over 64,000 circuit miles to determine which circuits serve which customer group as defined by IIEC. Consequently, if the Commission were to adopt the PIO's conclusion regarding the definition of primary and secondary customers, ComEd's alternative language should be accepted with the additional modification as provided by IIEC.

C. Customer Care Cost Allocation

The Commission should amend the PIO and adopt ComEd's conclusion that it has properly allocated customer services costs between its distribution and supply functions. Staff and the AG support ComEd's position. Staff Init. Br. at 26-30; AG Init. Br. at 6-7; Staff BOE at 9. Meanwhile, REACT's BOE simply reiterates arguments (REACT BOE at 9-14) supporting an analysis that the PIO properly rejected, finding it to be "almost useless." PIO at 67. There is no basis to accept REACT's proposal on this issue.

As fully explained in ComEd's BOE, certain customer services costs are common costs incurred to support both its distribution function and supply function. ComEd BOE at 6. However, the Commission previously has directed ComEd to allocate such common costs to its distribution function. Specifically, the Commission approved ComEd's supply tariff, which limits recovery of costs through the supply rider to ComEd's internal and administrative costs that are incurred *solely* as a result of ComEd meeting its statutory procurement obligation. Alongi Dir., ComEd Ex 1.0, 27:569-28:591. Accordingly, contrary to REACT's claim, ComEd has properly allocated such common costs.

ComEd also reiterates that this proceeding is at least the third time a party has argued for a different method to allocate ComEd's customer services costs between its distribution and supply functions. In ComEd's 2005 Rate Case, a coalition of alternative energy suppliers unsuccessfully requested that approximately 25% of ComEd's customer services costs be allocated to the supply function. Docket No. 05-0597, Order at 257 (July 26, 2006). Then, in ComEd's 2007 Rate Case, REACT unsuccessfully proposed to reallocate exactly 40% of the total \$162.2 million (or \$64.9 million) in certain customer services costs to ComEd's supply function. Docket No. 07-0566, Merola Reb., REACT Ex. 7.0, 13:287-22:485; Order at 207 (Sept. 10, 2008). Now, in this proceeding, REACT unsuccessfully requested that approximately \$88 million in customer services costs be removed from ComEd's distribution revenue requirement and recovered from ComEd's supply function. REACT Init. Br. at 15; *see also* Merola Dir., REACT Ex. 2.0, 16:336-25:528; REACT Ex. 2.5; Merola Reb., REACT Ex. 4.0C, 9:174-76. The PIO properly concludes that REACT's suggested 50% functionalization factor is "arbitrary," thereby rendering REACT's study "almost useless." PIO at 67, 68. Neither the PIO nor any party, in testimony or in briefing, offers any reason for the Commission to now change direction here.

Consequently, in accordance with the Commission’s statement in the Peoples Gas Order, there is no reason for the Commission to depart from its consistent decisions on this issue and the Commission should amend the PIO’s conclusion and find ComEd’s allocation of customer services costs to be reasonable. Docket Nos. 07-0241 and 07-0242 (consol.), Order at 16.

D. Issues Related to Street Lighting

Both IIEC and the Commercial Group correctly argue that the PIO erred when it adopted the use of a coincident peak (“CP”) allocator for distribution substations and primary line costs. IIEC BOE at 13-18; Commercial Group BOE at 1-3. IIEC’s Exception 2 highlights the problem with the PIO’s adoption of the CP demand allocator, where IIEC states that it disagrees with the PIO’s rejection of “*the [noncoincident peak] NCP demand allocator historically used for allocation of the costs of distribution substations and primary lines in ComEd’s embedded cost of service study...*” IIEC BOE at 13 (emphasis added). IIEC further notes:

IIEC believes the record has not been sufficiently developed on this issue to allow *such a major change* in allocation factors for primary lines and distribution substations in the context of this case. The Staff and the City recommendation appears to be made on the basis of assumptions, that are apparently contrary to the facts on the ComEd system. *Their proposal is inconsistent with State and national practices.*

Id. at 16-17 (emphases added). The PIO’s decision on this issue represents a dramatic break from the Commission’s prior treatment of the issue—beginning with the Commission’s approval in ComEd’s 2001 Rate Case of the use of an NCP allocator—and the recommendation set forth in the National Association of Regulatory Utility Commission’s (“NARUC”) Electric Utility Cost Allocation Manual. Docket No. 01-0423, Interim Order at 128 (Apr. 1, 2002); Baudino Reb., CG Ex. 2.0, 3:50-4:79. There have been no changed circumstances to warrant “such a major change” in ComEd’s allocation method for primary lines and substations. Accordingly, as

advocated by IIEC, the Commercial Group and ComEd, the Commission should reverse the PIO's decision on this issue.

E. Allocation Based on Usage or the Number of Customers

The City's Exception 1 argues that the PIO improperly accepted ComEd's method of allocating service drop costs for residential customers and should require a workshop process to address that method of allocation. City BOE at 2-4. ComEd's testimony and briefs demonstrate that ComEd correctly allocates service drop costs based on the number of customers because ComEd's experience has been that the number of customers determines the level of these costs, not the amount of electricity used by ComEd's customers. Meehan Dir., ComEd Ex. 2.0, 28:584-96; Meehan Reb., ComEd Ex. 5.0C, 18:385-93, 22:479-86; ComEd Init. Br. at 15-16; ComEd BOE at 22. Staff concurs, recommending "the use of the Company's revised allocator in the ECOSS." Staff BOE at 14. The City's argument that service drop costs should be allocated on the basis of usage was properly rejected and the City's eleventh-hour request for a workshop process on this issue does not warrant any amendment to the PIO. The PIO correctly concludes that "the Commission agrees with ComEd that the costs for providing service drops is also dependent on the number of customers." PIO at 77.

F. Allocation of Residential Customers' Uncollectible Expense

The City's Exception 2 repeats its argument that the Commission should require ComEd to include the indirect costs associated with uncollectible costs—which the City claims are approximately \$37 million—in its tabulation of total uncollectible costs and allocate all such costs in the same manner. City BOE at 5-8. ComEd responded to this same argument in its testimony and will not repeat its response here beyond emphasizing that ComEd's analysis of uncollectibles performed in this proceeding comported with the Commission's directive in the Initiating Order, while the City's proposal inappropriately socializes the \$37 million in indirect

costs associated with the collection process. Hemphill Reb., ComEd Ex. 4.0, 10:217-14:296. More particularly, an inter- or intra-class allocation of the costs associated with the collection process as suggested by the City would be inappropriate because such costs are largely fixed costs that do not vary with usage. *Id.*, 13:274-14:296.

The Commission should reject the City's Exception 2 because the City's argument does not warrant any amendment to the PIO. Instead, the Commission should amend the PIO's conclusion on the uncollectible debt costs issue to reject the City's proposal to evenly spread such costs across the residential classes. Accordingly, the Commission should approve ComEd's cost-based allocation of such costs in proportion to each residential class' respective responsibility for these costs. ComEd BOE at 22-23.

III. CONCLUSION

For the reasons stated herein and in ComEd's Initial and Reply Briefs and Brief on Exceptions, Commonwealth Edison Company respectfully requests that the Commission make the changes to the PIO discussed herein and in ComEd's Brief on Exceptions and as set forth in Attachment 1 thereto.

Dated: February 22, 2010

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I caused a copy of the Reply Brief on Exceptions of Commonwealth Edison Company to be served upon the service list in Docket No. 08-0532 by email on February 22, 2010.

/s/ John E. Rooney _____